

CHAPTER 418

S.P. 393 - L.D. 1308

**An Act to Implement the Recommendations of the Department
of Environmental Protection on Ambient Water Quality
Criteria for Mercury**

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, current law prohibits the discharge of mercury into water in any concentration that increases the natural concentration of mercury in the receiving waters; and

Whereas, new methods for testing mercury discharges allow for the detection of mercury at much lower concentrations than was previously possible; and

Whereas, it is necessary to immediately establish facility-specific standards for mercury discharges that prevent wastewater discharges and to require dischargers to implement pollution prevention measures to reduce the mercury load while statewide, risk-based criteria are being developed; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §413, sub-§11 is enacted to read:

11. Mercury. A facility discharging mercury into the waters of the State shall make reasonable progress to develop, incorporate and continuously improve pollution prevention practices and implement future economically achievable improvements in wastewater technology in order to reduce that facility's dependence upon mercury products, reduce or remove discharges of mercury over time and help in the restoration of the waters of the State. The department shall establish and may periodically revise interim discharge limits, based on procedures specified by rule, for each facility licensed under this section and subject to this subsection in order to reduce the discharge of mercury over time and achieve the ambient water quality criteria established in section 420, subsection 1-B. Notwithstanding section 420, subsection 1-B or section 464, subsection 4, paragraph F, a facility discharging mercury shall at all times meet the interim limits established under this subsection.

A. A discharge limit for mercury may not be less stringent statistically than an interim limit established by the department pursuant to Chapter 519 of rules adopted by the department, effective February 5, 2000, and must be based on recent data appropriate for the facility. A facility with such an interim limit shall comply with that limit unless the department establishes a different interim limit.

B. A facility that discharges mercury shall implement a pollution prevention plan consistent with requirements of the department. The department may require that the prevention plan be periodically updated.

(1) The facility shall submit a copy of the pollution prevention plan to the department and the copy must be made available for viewing upon request by a member of the public. The facility shall provide information concerning the status of implementation of the pollution prevention plan to the department as required by the department.

(2) The facility shall monitor for mercury and provide the monitoring information to the department as required by the department.

C. The department may adjust an interim discharge limit for mercury upward or downward upon its own action or at the request of a licensee based upon factors such as additional monitoring data, reduction in flow due to implementation of a water conservation plan, seasonal variations, increased atmospheric deposition and changes in levels of production.

D. The department may approve an application and establish an interim discharge limit for a new or expanded discharge of mercury after the effective date of this paragraph only if:

(1) An opportunity for public participation is provided;

(2) The discharge will not result in a significant lowering of existing water quality with respect to mercury; and

(3) The action is necessary to achieve important economic or social benefits to the State.

E. A facility that on January 1, 1971, was discharging mercury in connection with an industrial process and, on or before December 31, 1971, filed with the board a statement indicating the amount of the substance so discharged on that date may not be considered in violation of this subsection as long as any discharge of mercury by that facility is less than 454 grams, or one pound, per year and less than 45 grams, or

0.1 pound, per year after January 1, 2002. This paragraph is repealed January 1, 2004.

F. Notwithstanding this subsection, whenever the commissioner finds that a danger to public health exists due to mercury concentrations in any waters of the State, the commissioner may issue an emergency order to all facilities discharging to those waters prohibiting or curtailing the further discharge of mercury and compounds containing mercury into those waters. These findings and the order must be served in a manner similar to that described in section 347-A, subsection 3 and the parties affected by that order have the same rights and duties as are described in section 347-A, subsection 3.

G. A facility may not directly or indirectly discharge to a publicly owned treatment facility any concentration of mercury that contributes to the failure of the treatment facility to comply with interim effluent limits or applicable ambient water quality criteria for mercury. The owner of a publicly owned treatment facility may require any user of that facility, except for a residential source, to institute measures necessary to abate discharges of mercury to that facility. Those measures may include, but are not limited to, testing to determine concentrations of mercury, institution of pollution prevention practices or the evaluation of raw materials, products or practices. The owner of a publicly owned treatment facility may establish reasonable time schedules for completion of those measures. A facility that does not comply with abatement measures required by an owner of a publicly owned treatment facility may be subject to enforcement actions taken by the department or the owner of the facility and sanctions imposed by applicable municipal ordinances or section 349.

Sec. 2. 38 MRSA §420, sub-§1-A, as enacted by PL 1999, c. 500, §2, is repealed.

Sec. 3. 38 MRSA §420, sub-§1-B is enacted to read:

1-B. Mercury. Facilities discharging mercury into the waters of the State shall make reasonable progress to develop, incorporate and continuously improve pollution prevention practices, and implement economically achievable future improvements in wastewater technology, in order to reduce their dependence upon mercury products, reduce or remove discharges of mercury over time, and help in the restoration of the waters of the State. This subsection establishes ambient water quality criteria for mercury that identify that level of mercury considered safe for human health and the environment.

A. The ambient criteria for mercury are as follows:

(1) Ambient water quality criteria for aquatic life:

(a) Freshwater acute: 1.7 micrograms per liter;

(b) Freshwater chronic: 0.91 micrograms per liter;

(c) Saltwater acute: 2.1 micrograms per liter; and

(d) Saltwater chronic: 1.1 micrograms per liter; and

(2) Fish tissue residue criterion for human health: 0.2 milligrams per kilogram in the edible portion of fish.

B. A facility is not in violation of the ambient criteria for mercury if:

(1) The facility is in compliance with an interim discharge limit established by the department pursuant to section 413, subsection 11; or

(2) The facility is in compliance with a remediation or corrective action plan, license or order approved either by the department pursuant to section 1301, 1304, 1319, 1364 or 1365, or by the United States Environmental Protection Agency under federal law with the concurrence of the department.

C. The department may establish a site-specific bioaccumulation factor for mercury when there is sufficient information to indicate that a site-specific bioaccumulation factor will be protective of human health and wildlife. A site-specific bioaccumulation factor may only be established:

(1) As part of a licensing proceeding pursuant to section 413 by the board; or

(2) As part of a remediation or corrective action plan, license or order approved either by the department pursuant to section 1301, 1304, 1319, 1364 or 1365, or by the United States Environmental Protection Agency under federal law with the concurrence of the department.

D. The department shall establish by rule a statewide bioaccumulation factor protective of 95% of the waters of the State based upon data of acceptable quality and representing the species consumed by the public following guidelines published by the United States Environmental Protection Agency. Rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

E. The department shall establish by rule statewide ambient water quality criteria for mercury concerning wildlife based upon data of acceptable quality from the State or the United States Environmental Protection Agency. Rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

The commissioner shall report to the joint standing committee of the Legislature having jurisdiction over natural resources matters by January 15, 2005 and by January 15th every 5th year thereafter on the status of mercury discharges, progress in implementing pollution prevention plans and progress toward attainment of ambient water quality criteria for mercury under this subsection. The report may include proposed statutory amendments. The joint standing committee of the Legislature having jurisdiction over natural resources matters may report out any necessary implementing legislation related to these mercury issues in each session in which a report is required under this subsection.

Sec. 4. Legislative intent regarding mercury discharge. The State is required pursuant to the federal Clean Water Act to adopt ambient water quality criteria for toxic pollutants the discharge or presence of which in waters could reasonably be expected to interfere with designated uses of the waters adopted by the State. The Legislature finds that the State has a significant, ongoing contamination problem in regard to mercury and compounds containing mercury, both organic or inorganic, as demonstrated by widespread fish advisories. It also finds that this situation is due to a combination of factors, primarily including air deposition, historic industrial practices, current wastewater discharges and consumer products. Efforts are required to address each of these factors, including the support of national strategies to address interstate issues. This Act establishes ambient water quality criteria for mercury that identify that level of mercury considered safe for human health and the environment. Many of the State's waters do not meet these criteria. The

Legislature recognizes that technology is not always adequate to allow facilities to reduce their discharges to an extent necessary to avoid violation of these criteria and that background levels in some water bodies may violate these criteria even without the presence of wastewater discharges. In order to best address the portion of mercury entering the environment through wastewater discharges, the Legislature establishes a process in the Maine Revised Statutes, Title 38, section 413, subsection 11 to require significant and reasonable progress in the reduction of wastewater discharges containing mercury in the State.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective June 15, 2001.